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CM/ECF

Honorable Richard G. Andrews
United States District Court
J. Caleb Boggs Federal Building
844 King Street
Wilmington, Delaware 19801

Re: **United States v. David Gibson et al.**
Criminal Action Number 15-23-RGA

Dear Judge Andrews,

Defendants' responsive letter (D.I. 771) (the "Letter") distorts the record. The government did not allege in the Third Superseding Indictment (D.I. 243) (the "Indictment") that any particular Call Report line items were false. Rather, the Indictment charged false entries in Call Reports (Counts 7-9) and false statements in Call Reports (Counts 11-13).

The Letter completely ignores that Defendants sought clarification regarding the inclusion of Line Items 3 and 6 in the initial Bill of Particulars; that the government provided such clarification in response to Defendant's Motion for an Amended Bill of Particulars; that ***defendants filed*** that clarification with the Court (D.I. 290 at Ex. E); and that the government agreed ***in 2016*** that only Line Items 1 and 4 were at issue. (D.I. 313 at 8.)

Moreover, Defense Exhibits A, B, and C demonstrate that Line Items 3 and 6 are not at issue in the case. None of the loans highlighted in Exhibits B and C (the Delinquency Reports for the Fourth Quarter 2009 and First Quarter 2010, respectively) are Commercial Loans; rather, they are either Consumer Loans or Loans Secured by Investments – categories of loans not charged in the Indictment. Moreover, defendants recognized ***in November 2016*** that the one Commercial Loan listed in Exhibit A (the "Sheats P.L." loan) was erroneously included on the Delinquency Report and not reported in the Third Quarter 2009 Call Report:

I also pointed out that the government's Bill of Particulars references line item 3 on the 3Q09 2009 Call Report. Line item 3 of the Call Report references a grayed-out field that contains no entries. You indicated that you would follow up to determine if line item 3 was the line item the government actually intended to

